



## AMC DCSPER News Item



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### Free Speech Rights of Union Representatives

As citizens protected by the First Amendment right to freedom of speech, federal employees are permitted to make disclosures which would be of general interest to the public and to comment on matters of public concern.

However, since this right is balanced against the employer's interest in the efficiency of the Federal service, statements which reasonably can be expected to impair public confidence in the agency, undermine the integrity of agency operations, or interfere with the maintenance of discipline at the workplace are not likely to enjoy Constitutional protection.

In addition to their individual Constitutional rights, employees acting as union representatives have an arguably broader right under the statute which governs Federal labor relations. According to 5 U.S.C. §7102(1), employees are guaranteed the right "to act for a labor organization in the capacity of a representative and the right, in that capacity, to present the views of the labor organization."

This has been interpreted as allowing an employee acting in a representative capacity to communicate information on matters affecting employees' terms and conditions of employment, not only to government officials, but also to the media, the general public, or other interested parties. (Bureau of Prisons, Federal Correctional Institution, and American Federation of Government Employees, 17 FLRA No. 101, 17 FLRA 696, April 24, 1985)

Although employees exercising speech rights under Section 7102 are afforded considerable latitude, the right is restricted to some degree by the need to interpret it "in a manner consistent with the requirement of an effective and efficient Government" pursuant to 5 U.S.C. §7101(b). Therefore, the Federal Labor Relations Authority reviews the totality of circumstances and applies a balancing test which attempts to protect the kinds of "robust debate" commonly associated with labor unions while prohibiting the type of "flagrant misconduct" which would be antithetical to the agency's ability to maintain discipline and accomplish its mission.

Although it is difficult to predict the outcome of this balancing test, it is fairly certain that the Authority will not condone any conduct which is unnecessarily disruptive or disloyal. (Department of Veteran Affairs and Federation of Police, 50 FLRA No. 81, July 24, 1995) It is even more clear that speech characterized by a deliberate or reckless disregard for the truth will enjoy no protection under any theory of law.

Employees who engage in speech that exceeds the boundaries of protected activity may be subject to disciplinary action for flagrant misconduct even if they are union officials speaking in a representative capacity.

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